



20 SEP 2002

45

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D. C. 20231  
www.uspto.gov

PERKINS COIE LLP  
P.O. BOX 2168  
MENLO PARK CA 94026

In re Application of	:	
Roberto Crea et al	:	DECISION ON
Application No.: 09/743,691	:	
PCT No.: PCT/US99/16549	:	PETITION
Int. Filing Date: 22 July 1999	:	
Priority Date: 23 July 1998	:	UNDER 37 CFR 1.181
Attorney's Docket No.: 2740-0001.10	:	
For: WATER-SOLUBLE EXTRACT	:	
FROM OLIVES	:	

This decision is responsive to applicants' "Petition to Withdraw Holding of Abandonment Under 37 C.F.R. 1.181" filed 19 July 2002, which is being treated as a petition under 37 CFR 1.181 requesting that the Notification of Abandonment mailed 30 May 2002, be withdrawn because the Notification of Missing Requirements was never received.

### **BACKGROUND**

On 22 July 1999, applicants filed international application PCT/US99/16549, which claimed priority of an earlier U.S. application filed 23 July 1998. A copy of the international application was transmitted on 03 February 2000 to the USPTO from the International Bureau. A DEMAND was timely filed on 08 February 2000 electing the United States. Accordingly, the thirty (30) month time period for paying the basic national fee in the United States of America expired at midnight on 23 January 2001.

On 12 January 2001, applicants filed a Transmittal Letter for entry into the national stage in the United States of America. Filed with the Transmittal Letter was, inter alia, the requisite basic national fee. No executed oath or declaration of the inventors accompanied the transmittal letter.

On 05 March 2001, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a) and(b), identifying the application by International application number and international filing date" must be submitted within one month from its 05 March 2001 date of mailing or by 31 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 30 May 2002, a Notification of Abandonment was mailed to applicant's representative. It stated that the applicant has failed to properly reply to the Notice to File Missing Requirements (Form PCT/DO/EO/905), mailed on 09 March 2001.

On 19 July 2002, applicants filed the instant petition.

### **DISCUSSION**

MPEP section 711.03(c) establishes the requirement to show nonreceipt of an Office action. It states that "the showing required by the notice to establish the failure to receive an Office action must consist of a statement from the practitioner stating that the Office action was not received by practitioner and attesting to the fact that a search of the filed jacket and docket records indicate that the Office action was not received. **A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.**"

A review of the petition reveals that petitioner has not complied with the requirements set forth in section 711.03(c), which requires a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed. Petitioner's statements on page 1 of the petition "... I further attest I have made a thorough search of the file jacket and the docket records and there was no indication that the Notice was received... -" and petitioner's computer printout of the docket history of the above application by themselves are insufficient to establish nonreceipt of "Notice of Missing Requirements" mailed on 09 March 2001 without any corroborating evidence, e.g., a log showing the mail received during the time period where the nonreceipt Office action would have been entered had it been received or a tickler sheet for 09 April 2001. In other words, to establish a showing of nonreceipt of the "Decision on Petition" would require, at a minimum, a copy of docket showing the replies docketed for a date of one month from the mail date of the nonreceived Office action.

Accordingly, petitioner has not met the requirements under MPEP section 711.03(c) to establish nonreceipt of an Office action, and the withdrawal of abandonment of the above captioned- application at this time is not appropriate.

### **CONCLUSION**

The petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

The above-captioned application remains **ABANDONED**.

If reconsideration of the merits of the petition under 37 CFR 1.181 is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of this letter marked to the attention of the PCT Legal Office.



*for* Boris Milef  
PCT Legal Examiner  
PCT Legal Office



Rafael Bacares  
PCT Legal Examiner  
PCT Legal Office  
Telephone: (703) 308-6312  
Facsimile: (703) 308-6459